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Leonard S. Sawicki Director **FCC Affairs**

EX PARTE

Federal Communications Commission

Office of Secretary

EX PARTE OR LATE FILED

April 17, 1997

Mr. William F. Caton Secretary **Federal Communications Commission Room 222** 1919 M Street NW Washington, D.C. 20554

Re: CC Docket 97-121: SBC

d A Sawicki

Dear Mr. Caton:

On April 16, in response to a requast by the FCC staff, I provided a copy of the attached material to Craig Brown of the Common Carrier Bureau. The document is a transcript from an Oklahoma Corporation Commission proceeding, which contains statements by an administrative law judge on Southwestern Bell's progress in meeting the Competitive Checklist.

Please include this letter and the enclosed copy on the record of this proceeding.

Sincerely,

Leonard S. Sawicki

Attachment

CC:

Mr. Brown

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF CHLAMONA

APPLICATION OF EMPST G.
JOHNSON, DIRECTOR OF THE
PUBLIC UTILITY DIVISION,
OKLAHOMA CORPORATION
COMMISSION TO EXPLORE THE
REQUIREMENTS OF SECTION 271
OF THE TELECOMMUNICATIONS
ACT OF 1996.

970000064

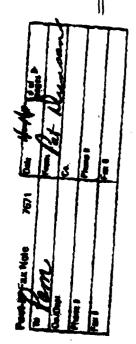
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APR 1 6 1997

CLARK, STAKEM, WOOD & DOUGLAS, P.C.

TRANSCRIPT OF PROCEEDINGS

April 14, 1997



OFFICIAL REPORTER:

Bertha McMurry

OKLAHOMA CORPORATION COMMISSION — OFFICIAL TRANSCRIPT

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THE COURT: Respen the record please in FUD 970000064.

Based on the pleadings filed in this cause, accepting the testimony in the record, the comments placed into this record by Southwestern Bell--and, as we are all aware. I have made it quite clear--the burden is on Southwestern Bell to prove the case that is before us; and, of course, this is less of a case and more of an investigation into whether the Commission should allow Southwestern Bell to provide intraIATA services.

As you are quite awars from the cases heard here at the Commission. I am very much in favor of promoting competition. I feel it is very desirable to open the marketplaces as we have attempted to do in many of the cases at the Commission. It is also important to look at the public interest in this area. In this matter I have checked the regulations and the law and I note that the public interest that is to be served in determined by the FCC. So I will let that part of this matter go.

Southwestern Bell I believe in this filing does not meet the requirements for itralATA relief in Oklahoma. Southwestern Bell cannot proceed under Section 271 (C)(1)(b). I want to make that clear that in my opinion they can only proceed under "A". There are facilities-based providers and there are several others that have reached interconnection agreements or that have interconnection agreements pending with Bell. It is my belief that it is not a matter of whether these parties choose to meet

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all fourteen of those requirements or not, but it is a matter of whether Southwestern Bell is providing the ability for those parties to use those 14 different requirements.

The question involved here is whether Southwestern Bell has met the test. And again, I find the answer to be, "Mo." Several parties have argued that there is a quantity or quality level of local competition to be argued, and I find that not to be true, too. But I can determine from the testimony and the pleadings filed berain whether there are impediments or blockades being placed in the roadway to the provision of local competition. And based on the pleadings and testimony, at this time I find that answer to be. "Yes, there are impediments and blockades. That does not say that in 30 days or even 60 days from now those impediments and blockedes might not be removed.

I would point out that from some of the schedules and implementation of certain parts of the agreement in the arbitrations that I have heard, that I believe it was at least July and I think maybe one of them was September before the implementations would have taken place. I didn't go back and You will have to refer to those in the ALJ look those up. Reports yourselves.

Again, I find that the approval of the STC--and I have given you pre-warning of this, everybody in here; I don't agree with the arguments on either side. I find that the approval of the STC has no bearing on this hearing. I have stated that on

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appeals before the Commission En Banc in another proceedings. I find the STC is a separate, distinct, offering by Bell to whoever it may be -- XYZ-- to come forward if they want to use that and sign it as an agreement to start providing service. I do not find that it applies in this particular case. It may, if Track "B" was appropriate, but with Track "B" not being appropriate, it does not help Bell in this matter whatsoever. It is marely an offering. Bell can only rely on the STC if no interconnection agreements had been requested.

If you look at 271C(1)(b) it says: "Failure to request...". If you read the rest of that, it is very plain, despite the obvious and arguments, that requests have been made, then the question comes down to, after the requests have been made the provision for such requests are being taken care of by its WB.

To put it in an even simpler way, I take the words out of the statute. The question revolves on the "providing access and interconnection."

Brooks Fiber is a qualifying facilities-based carrier under Subsection A, but Bell has not satisfied the checklist because Bell is "not providing access and interconnection" in such a manner as to provide for competition in the marketplace. You need to reread that. As I said earlier, in comparison with some of the arguments, you can't quantify—it is not a matter of competition; it is a matter of whether they are providing it and

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it is available. It is not a matter of if they want to accept it or not. If they choose not to accept it, that doesn't disqualify Bell from being able to meet the checklist. But at this time I find that they are not providing that.

Also, I strongly suggest that you go back and look at 96-218 and 96-243, the ALJ's report in those and the Commission's final order regarding cost-based pricing for a determination in answering all of the questions raised here today for the evaluation of the acceptance of Southwestern Bell's rates on an interim basis in those matters and the true-up and you will find the reasoning and that will answer that question.

Again, a predominately facilities-based provider is not a numbers game but it is a question of access to facilities, an equal ability to compete. Southwestern Bell need not rely upon competitors to take all of the checklist items, but may demonstrate compliance using its agreements, and such items must be easily and equally accessible but must be "commercially operational" on equal terms as to all.

Close the record.

(End of decision.)

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